169

(4)

No. 09-1285

Supreme Court, U.S.
FILED
AUG 23 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

TED L. PAPPAS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

ROBIN SHELLOW*
URSZULA TEMPSKA
THE SHELLOW GROUP
324 West Vine Street
Milwaukee, Wisconsin 53212-3606
[414] 263-4488
robin@theshellowgroup.com
JAMES SHELLOW
SHELLOW & SHELLOW, S.C.

**Counsel of Record for Petitioner, Ted L. Pappas*

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

I. RECENT EVENTS IN WISCONSIN PROVE THAT INNOCENT INDIVIDUALS ARE BEING TARGETED WITH E-MAILS CONTAINING CHILD PORNOGRAPHY 1

TABLE OF AUTHORITIES

MISCELLANEOUS:

Associated Press, August 3, 2010, "Who sent e-mails with child porn to Wisconsin lawmakers?," available at http://m.greenbaypressgazette.com/apps/pbcs.dll/article?AID=/20100803/GPG0101/8030585/1207/GPGnews (last accessed August 18, 2010) 3

Bice, Daniel and Patrick Marley, "E-mailer tries to extort Wisconsin Lawmakers," the Journal Sentinel, August 2, 2010, available at http://www.jsonline.com/news/statepolitics/99784764.html (last accessed August 18, 2010) 7

I. RECENT EVENTS IN WISCONSIN PROVE THAT INNOCENT INDIVIDUALS ARE BEING TARGETED WITH E-MAILS CONTAINING CHILD PORNOGRAPHY.

Pursuant to Supreme Court Rule 15.8,[1] Petitioner Ted L. Pappas, by and through his attorneys, submits this Supplemental Brief in support of his Petition for a Writ of Certiorari to review the interlocutory decision and order of the United States Court of Appeals for the Seventh Circuit.

By this Supplemental Brief, Petitioner seeks to call to this Court's attention a relevant intervening matter not available at the time of the filing of his Reply Brief on July 28, 2010, which was Petitioner's last filing. *See* S.C.R. 15.8.

The relevant intervening matter consists of the fact that unsolicited child pornography e-mails have recently been sent to several Wisconsin legislators in an extortion effort.

This news story first broke on August 2, 2010, several days after Petitioner's Reply Brief was filed with this Court. Two articles reporting this story are listed in the Table of Authorities and read as follows:

---

[1] Rule 15.8 expressly allows "[a]ny party [to] file a supplemental brief at any time while a petition for certiorari is pending, calling attention to . . . intervening matter not available at the time of the party's last filing."

Posted August 3, 2010

Who sent e-mails with child porn to Wisconsin lawmakers?

The Associated Press

MADISON – State criminal investigators are trying to determine who sent e-mails containing images of child pornography to Wisconsin lawmakers in July as part of a blackmail plot.

Ed Wall, the head of the state Justice Department's criminal investigations unit, sent an e-mail Friday to the offices of all 132 state lawmakers warning them of e-mails sent containing child porn.

"The sender acknowledges that the intent of the note was to place child pornography on the recipient's computer as leverage to attain a desired legislative agenda," he wrote.

Wall urged lawmakers not to open any attachments or to forward the e-mails if they receive them. The subject line in the messages varies and is misleading, he said.

All of the e-mails were sent since July 23 and contain a message regarding investigative efforts by a private group of individuals, Wall said.

The DOJ has declined to release a copy of the threatening e-mail, saying it is part of an ongoing investigation.

> Capitol Police Detective Ed Bardon declined to say how many offices received e-mails. A person must knowingly be in possession of child pornography in order to be in violation of state law. The person must also know that the material is sexually explicit and involving children under age 18.
>
> Over the past 10 years, the Department of Justice's Internet Crimes Against Children Task Force has arrested more than 728 people on child porn charges and executed more than 1,017 search warrants, Attorney General J.B. Van Hollen said.

Associated Press, August 3, 2010, "Who sent e-mails with child porn to Wisconsin lawmakers?," available at http://m.greenbaypressgazette.com/apps/pbcs.dll/article?AID=/20100803/GPG0101/8030585/1207/GPGnews (last accessed August 18, 2010).

> ***E-mailer tries to extort Wisconsin lawmakers***
>
> **Mail tries to put child porn on representatives' computers, official says**
>
> By Daniel Bice and Patrick Marley of the Journal Sentinel
>
> Aug. 2, 2010
>
> State officials have launched a criminal investigation to determine who sent e-mails trying to extort at least a half-dozen lawmakers by infecting their Statehouse computers with child pornography.

Edward Wall, administrator of the Division of Criminal Investigation, contacted lawmakers late last week to tell them to avoid opening attachments to suspicious e-mails.

"The sender acknowledges that the intent of the note was to place child pornography on the recipient's computer as leverage to attain a desired legislative agenda," Wall wrote late Friday. "The Division of Criminal Investigation is working with the Capitol Police on this investigation."

Rep. Joel Kleefisch (R-Oconomowoc) said his staff told him he'd received an inappropriate e-mail disguised as a message about cable TV rates.

"I think it is abhorrent that anyone would ever use child pornography as leverage for anything," Kleefisch said. "We're dealing with someone who should be behind bars, because he's trafficking in child pornography."

According to a copy of the message sent to a lawmaker, the e-mailer is part of a team of people on a mission to "hunt down and locate individuals who are involved in the child sex trade." The group has forced a number of these people to make payments instead of being exposed or prosecuted, the e-mailer claims.

"My motivations have not been altruistic, but financial," says the e-mail.

The e-mailer asks lawmakers to cut all funding to the state task force responsible for identifying and prosecuting those involved in child sex crimes, including child pornography. The message says the task force is using tax dollars to try to accomplish what the e-mailer's team is already doing more effectively at no cost to the state.

The legislators also were urged to pass a bill increasing the penalties for possessing child pornography so offenders would be sentenced for each piece of porn found in their possession, according to the e-mail. The proposed legislation, the e-mailer said, should be modeled after the child pornography law in Arizona.

"Do not put your faith in law enforcement to find us," the e-mailer wrote. "We are using tactics that make us untraceable online."

The only lawmaker the e-mail mentions by name is Assembly Majority Leader Thomas Nelson (D-Kaukauna), who is running for lieutenant governor.

"If you care to speak with Representative Nelson, he will let you know that my presence in his inbox has been ongoing for most of the year," the e-mail says. "I have gone by many monikers, but he'll best know me as 'pthc_luvr.'"

Nelson did not immediately return a phone call.

The message also makes reference to a supposed incident in March in which the team cracked into several wireless systems near the Kaukauna Police Department to make a "psychological statement" to law enforcement. It also says the group altered traffic patterns there, resulting in a series of accidents on U.S. Highway 41.

But Kaukauna Police Chief John Manion said he knew nothing about either situation. He said he also had not been contacted by state investigators about the letter.

"It just came to my attention because of the Kaukauna connection," Manion said Monday.

Also receiving the e-mail was Rep. Mark Pocan (D-Madison), co-chairman of the powerful Joint Finance Committee. Pocan declined to comment.

The names of other recipients could not be confirmed, but the e-mails appear to be targeted to members of the Assembly. There have been no reports of senators receiving the messages so far.

Wall said Monday he couldn't discuss the case.

"We have an ongoing criminal investigation," he said.

His note to lawmakers said the subject line in the e-mails, which started going out July 23, varies and is often misleading. He

> asked members of the Senate and Assembly not to open or forward any of the suspicious messages.
>
> An aide to Assembly Speaker Mike Sheridan (D-Janesville) said he had not received one of the messages and declined further comment, referring questions to the Capitol Police.

Bice, Daniel and Patrick Marley, "E-mailer tries to extort Wisconsin Lawmakers," the Journal Sentinel, August 2, 2010, available at http://www.jsonline.com/news/statepolitics/99784764.html (last accessed August 18, 2010).

The relevancy to this Petition of the events reported in the above articles cannot be overstated.

First, these events support the Petitioner's assertion, in his prior Briefs, that innocent citizens are daily targeted with e-mails containing child pornography. The district court agreed, concluding that such targeting does and will occur, despite any putative risks; and thus that being an addressee of e-mails with child pornography – without any act affirmatively displaying interest in such illegality – does not support probable cause. The recent events in Wisconsin bolster the district court's conclusion.

Second, these events prove wrong the appellate court's assertion that the risks of sending child pornography to innocent recipients deter or prevent such targeting of innocents. *See* App. 6. The events reported in the cited articles provide irrefutable

evidence that the appellate court erred in so asserting.

Finally – and most importantly – these events illustrate the danger identified by the district court: that virtually every e-mail user would be subject to search and to prosecution for knowing possession or receipt of child pornography, if being an addressee of e-mails with child pornography, alone, were to support official belief in probable cause for these crimes.

For all the reasons given in this Supplemental Brief and in Petitioner's original Brief, this Court should grant the Petition.

Respectfully submitted,

ROBIN SHELLOW*
URSZULA TEMPSKA
THE SHELLOW GROUP
324 West Vine Street
Milwaukee, Wisconsin 53212-3606
[414] 263-4488
robin@theshellowgroup.com
JAMES SHELLOW
SHELLOW & SHELLOW, S.C.

Counsel of Record for Petitioner, Ted L. Pappas